

Annie Nyirenda v Proto Feeds Commercial

Cause 385 of 2022

Summary

Court:	High Court of Malawi
Registry:	Commercial Division
Bench:	Honourable Justice Trouble Kalua
Cause Number:	Commercial Cause 385 of 2022
Date of Judgment:	February 06, 2025
Bar:	For the Claimant: B. Nkhunda, on brief of Counsel Phombeya For the Defendant: J. Kara and P. Kalulu

The Claimant commenced proceedings against the Defendant to recover various sums, including loss of profit, expenses incurred, loan repayment, and other associated costs. Following a scheduling conference on 2nd December 2024, the matter was set for trial on 6th February 2025. On the eve of the trial, the Claimant's legal practitioners wrote to the Court seeking an adjournment on the grounds that their counsel, Ronald Henry Phombeya, had not renewed his practising licence. On the date set for trial, counsel Blessings Nkhunda appeared, holding a brief, but advised that he was not prepared to conduct the trial since

he was not conversant with the matter.

The Court, considering the matter, emphasised that renewal of a practising licence is a statutory obligation under the Legal Education and Legal Practitioners Act and not an unforeseen event. The Court held that it was the duty of counsel to inform their client well in advance to enable the client to either appear in person or appoint alternative counsel, in compliance with section 31(5) of the Act. The Court found that counsel's last-minute notification was inadequate and that this failure of duty prejudiced the Claimant. Moreover, it was noted that the same excuse had been previously used to seek adjournment in February 2023, resulting in costs awarded against the Claimant.

In light of these factors, the Court refused the adjournment request, found that the Claimant could not prosecute the matter, and dismissed the Claimant's case for want of prosecution with costs to the Defendant.